



# Economic Affairs Interim Committee

## 62nd Montana Legislature

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### SENATE MEMBERS

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EDWARD WALKER  
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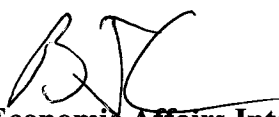
### HOUSE MEMBERS

TOM BERRY--Chair  
CHUCK HUNTER  
CAROLYN SQUIRES  
GORDON VANCE

### COMMITTEE STAFF

PAT MURDO, Lead Staff  
BART CAMPBELL, Staff Attorney  
CLAUDIA (CJ) JOHNSON, Secretary

April 5, 2012

  
**TO:** Economic Affairs Interim Committee me  
**FROM:** Bart Campbell, EAIC staff attorney  
**RE:** February - April Rule Review

**ECONOMIC AFFAIRS IC**  
**APRIL 20, 2012**  
**EXHIBIT 16**

### Dept. of Agriculture

- Adopting six rules pertaining to nursery stock to reduce risk of invasive pests associated with the movement of nursery stock into Montana.
- Amending one rule to clarify what is or is not a commodity warehouse and subject to licensing.

### Dept. of Commerce

- Amending one rule to update guidelines to conform with the federal community development block grant program.

### Dept. of Labor and Industry

- Amending one rule and repealing one rule to conform with statutory language adopted by the 2011 Legislature establishing criteria to determine employee misconduct with respect to unemployment insurance.
- Adopting four rules establishing reasonable and standardized application procedures for contractor registration to ensure smooth workflow of the contractor registration unit.

### Alternative Health Care Board

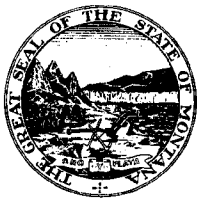
- Amending several rules pertaining to midwives' inactive status, and midwives' and naturopathic physicians' continuing education requirements.

### Board of Funeral Service

- Increasing fees as over the last several years the board has experienced an increase in expenses in excess of revenue generated by the fees.

### Board of Hearing Aid Dispensers

- Increasing fees in response to SB 132 of the 2011 session that provided that audiologists



**Montana Legislative Services Division**  
**Legal Services Office**

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February 15, 2012

TO: Sen. Eric Moore

FROM: Bart Campbell  
Staff Attorney

RE: Request for legal opinion on acceptable use of per capita fees levied on livestock.

ISSUE: May per capita fees levied on livestock be used to offset the current deficit accrued by the Board of Horseracing or to repay any loans made to the board?

ANSWER: Article XII, section 1(2), of the Montana Constitution authorizes levies on livestock but provides that the revenue generated by the levies must be used solely for the purposes of the levies. The per capita fees authorized in 15-24-921, MCA, must be used for the purpose of aiding in the payment of salaries and all expenses connected with the enforcement of the livestock laws and for the payment of bounties on wild animals. Because the use of the per capita fees authorized in 15-24-921, MCA, is specific, the fees must be used for the specified purposes. Any other use of the fees would violate the provisions Article XII, section 1(2), of the Montana Constitution.

DISCUSSION: As of January 12, 2012, the Board of Horseracing was reported to be operating with a deficit of more than \$500,000. Apparently the Department of Livestock has received a loan from the Department of Administration to help with the deficit and may intend to use the per capita fees on livestock authorized in 15-24-921, MCA, to cover the loan or reduce the Board of Horseracing's deficit until certain fees and other proceeds collected by the Board of Horseracing can be used to replace the per capita fees.

As stated above, 15-24-921, MCA, provides that per capita fees must be used for the purpose of aiding in the payment of salaries and all expenses connected with the enforcement of the livestock laws and for the payment of bounties on wild animals. Article XII, section 1(2), of the Montana Constitution authorizes levies on livestock and agricultural commodities for disease control and indemnification, predator control, and livestock and commodity inspection, protection, research, and promotion. The argument cannot be made that diverting the per capita fees in some way constitutes livestock promotion and therefore would be a valid use of the fees. Article XII, section 1(2), goes on to state that: "Revenue derived shall be used solely for the purposes of the levies." The intended use of the per capita fees set out in 15-24-921, MCA, is specific and this section makes no mention of promoting livestock. Under the constitutional mandate the fees must be used for their stated purpose.

On its web page the Department of Livestock describes per capita fees as follows:

Per capita fees are per-head fees charged on livestock. Authorized by Montana Code Annotated 15-24-921, per capita fees are assessed on "all poultry and bees,